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U.S. Department of Homeland Security  
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Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

*DR*

[Redacted]

FILE: WAC 03 059 50969 Office: CALIFORNIA SERVICE CENTER Date: **SEP 30 2004**

IN RE: Petitioner: [Redacted]  
Beneficiary [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a supplier of promotional items. It seeks to employ the beneficiary as a market research analyst, and endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the beneficiary did not qualify to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional information.

The director's determination denying the Form I-129 petition was based solely on the beneficiary's qualifications to perform the duties associated with that occupation. The only issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and  
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is

equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The offered position is that of a market research analyst. The U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that market research analysts generally possess graduate degrees in economics, business administration, marketing, statistics or a closely related discipline. Entry level positions such as research assistants, administrative or management trainees, marketing interviewers, or professional sales positions may be filled by individuals possessing only a bachelor's degree.

The petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2 (h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted an evaluation from [REDACTED] a consultant with Global Education Group, Inc. [REDACTED] opined that the beneficiary holds the equivalent of a bachelor's degree in business administration with a major in marketing from an accredited college or university in the United States based upon her prior education and training. Although the record establishes that [REDACTED] professor and Chairman of the Department of Decision Sciences and Information Systems at Florida International University, is an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which

has a program for granting such credit based on an individual's training and/or work experience, his evaluation was rendered on behalf of a credentials evaluation service. Credentials evaluation services are authorized to evaluate foreign education for equivalence purposes only, not past work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the experiential evaluation is of little evidentiary value. Even if Dr. Koulamas' evaluation were accepted, however, the beneficiary would still not qualify to perform the duties of the proffered position as market research analysts generally possess graduate degrees in economics, business administration, marketing, statistics or a closely related discipline. Entry level positions such as research assistants, administrative or management trainees, marketing interviewers, or professional sales positions may be filled by individuals possessing only a bachelor's degree. The position offered to the beneficiary, however, is that of a market research analyst, not one of the entry level positions.

An evaluation of the beneficiary's foreign education was also performed by Michelle A. Birch of Global Education Group. Ms. Birch states that the beneficiary's foreign Bachelor of Arts degree is equivalent to a bachelor's degree awarded by a regionally accredited university in the United States. The educational evaluation does not state, however, that the equivalent bachelor's degree is in any particular educational discipline. For this additional reason, the beneficiary is not deemed qualified to perform the duties of the proffered position. Again, the beneficiary does not possess a graduate level education in economics, business administration, marketing, statistics or a closely related discipline.

Citizenship and Immigration Services (CIS), may itself determine whether the beneficiary is qualified to perform the duties of the specialty occupation. That determination may be made pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which provides:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books or major newspapers;

- (iv) Licensure or registration to practice the specialty occupation in a foreign country;  
or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The documentation recounting the beneficiary's work experience is in the form of an unsworn affidavit authored by her. She does not provide proof of her prior work experience in the form of statements from her past employers detailing the nature and extent of her past employment. The evidence tendered is insufficient to establish that: the work experience included the theoretical and practical application of specialized knowledge required by the proffered position; the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the beneficiary has recognition of expertise in the specialty. CIS cannot, therefore, determine that the beneficiary is qualified to perform the duties of the specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has failed to sustain that burden and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.